

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CORPS OF ENGINEERS, UNITED STATES ARMY,  
AND THE UNITED STATES NUCLEAR REGULATORY COMMISSION  
FOR REGULATION OF NUCLEAR POWER PLANTS

JULY 2, 1975



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1. Purpose

a. For the purpose of coordinating and implementing consistent and comprehensive requirements to assure effective, efficient and thorough regulation of nuclear power plants and to avoid conflicting and unnecessary duplication of effort and of standards related to overall public health and safety and environmental protection, the Corps of Engineers, United States Army (US Army CE) and the United States Nuclear Regulatory Commission (U.S.N.R.C.) have entered into this Memorandum of Understanding-- subject to their respective statutory authorities. The agreement pertains to nuclear power electric generating stations using nuclear steam supply systems, including their appurtenant structures, located in or affecting navigable waters. In the case of a floating nuclear power plant, such structures include the electrical transmission lines from the plant to a landbased substation, the protective breakwater and mooring systems, and all appurtenant supporting facilities.

b. Nothing in this Memorandum of Understanding is to be interpreted as contravening the terms of the existing Memorandum of Understanding between the Atomic Energy Commission and the Department of Defense dated 14/16 Feb 1967, pursuant to Section 91b of the Atomic Energy Act of 1954, as amended.

2. Statutory Background

a. The Corps of Engineers, United States Army (US Army CE).

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Secretary of the Army, acting through the US Army CE exercises regulatory authority over the construction of any structures in navigable waters of the United States, the dredging and/or filling of any navigable waters of the United States, and any other activity which would alter or modify the course, condition, location or capacity of a navigable water of the United States. This responsibility encompasses onshore as well as offshore activities when such activities affect the course, condition or capacity of a navigable water of the United States. Navigable waters of the United States have been administratively defined by the US Army CE (33 C.F.R. 209.260) to generally include those waters, including the territorial seas, which are subject to the ebb and flow of the tide or which have been used, are used, or are susceptible of use as an instrument to transport interstate commerce.

The Outer Continental Shelf Lands Act [43 U.S.C. 1333(f)] extends the authority of the Secretary of the Army, acting through the US Army CE, to the prevention of obstruction to navigation in the navigable waters of the United States due to the construction of artificial islands and fixed structures on the outer continental shelf beyond the territorial sea.

Pursuant to Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1344), the Secretary of the Army, acting through the US Army CE, exercises regulatory authority over the discharge of dredged or fill material in navigable waters at specified disposal sites. The selection of disposal sites will be in accordance with guidelines developed by the Administrator of the United States Environmental Protection Agency in conjunction with the Secretary of the Army.

Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishing areas, wildlife or recreation areas.

Under the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et. seq.), the Secretary of the Army, acting through the US Army CE, is authorized to issue permits for the transportation of dredged material from the United States for the purpose of dumping into ocean waters. However, as "dumping" is defined by Section 3(f) of that Act, it does not include the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on/or in the submerged land beneath such waters, for a purpose other than disposal when such construction or such placement is otherwise regulated by Federal law.

Where significant impacts on the quality of the human environment are expected to result from activities covered by an application for a permit under the above statutory provisions, the US Army CE must prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et. seq., before the Secretary of the Army, acting through the U.S. Army CE, may issue the permit.

b. The United States Nuclear Regulatory Commission (U.S.N.R.C.).

The Energy Reorganization Act of 1974 [Pub. Law 93-438 (88 Stat 1233)] abolished the Atomic Energy Commission, and Section 201 of that Act created the Nuclear Regulatory Commission and transferred to the U.S.N.R.C. all the licensing and related regulatory functions of the Atomic Energy Commission. Pursuant to the Energy Reorganization Act of 1974; Chapters 6, 7, 8, 10, and 16 of the Atomic Energy Act of 1974, as amended, 42 U.S.C. 2011 et. seq.; and the rules and regulations issued pursuant thereto, the U.S.N.R.C. is authorized to license and regulate the construction and operation of, among other things, nuclear power plants, from the standpoint of the common defense and security and public health and safety. In addition, pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et. seq., the U.S.N.R.C. is required to prepare an environmental impact statement on, and consider in its licensing actions, the effects on the quality of the human environment caused by the construction and operation of such plants.

3. Agency Responsibilities

a. General Arrangements

The U.S.N.R.C. will serve as "Lead Agency," exercising the primary responsibility in conducting environmental reviews and in preparing environmental statements for nuclear power plants covered by this Memorandum of Understanding. Except as otherwise indicated, all written communications of US Army CE to and from a license applicant or licensee relating to environmental analyses and reports will be transmitted through the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee. In particular, any actions requiring partial or complete shutdown of the nuclear power plant or changes from the design and operating limitations and conditions approved within the terms of this Memorandum of Understanding will be transmitted through the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee.

Except with respect to any actions requiring partial or complete shutdown of a nuclear power plant or changes from the design and operating conditions approved by either agency, each agency will separately enforce its pertinent regulations or orders and the conditions of the permits and licenses which it issues. Enforcement, as used in this Memorandum of Understanding, means the discovery of a violation of law or the conditions of a permit or license, the issuance of a notice of violation, and subsequent actions for the imposition of sanctions.

To the extent practicable, each agency will consult fully with the other with respect to enforcement actions concerning matters which affect the responsibilities of the other agency as described in this Memorandum of Understanding. Copies of correspondence and other documents relating to such enforcement action will be furnished to the other agency on a timely basis.

The U.S.N.R.C. and the US Army CE will exercise the functions described in this agreement so as to avoid duplication of regulation to the maximum extent consistent with their respective statutory obligations, public health and safety, and environmental protection.

The US Army CE, acting through the appropriate District Engineer, with the assistance of US Army Corps of Engineers research and development centers, when such assistance is appropriate, will participate with the U.S.N.R.C. in the preparation of the environmental impact statements to include the drafting of material for the sections which consider and evaluate the following topics, as applicable, and the analysis leading thereto.

- 1) coastal erosion and other shoreline modifications, shoaling, and scouring
- 2) siltation and sedimentation processes
- 3) dredging activities and disposal of dredged materials
- 4) location of structures in or affecting navigable waters

The applicant will comply with US Army CE regulations in developing information needed for US Army CE review. As do U.S.N.R.C. regulations, these



regulations require the applicant to submit, at his expense, information required in support of his application. Once such information is received, the following procedure will apply to independent analysis of information received in any of these four areas. (An independent analysis is one requiring effort in addition to the analysis done by the U.S.N.R.C. and the US Army CE staff.)

- 1) U.S.N.R.C. will provide funding for such an independent analysis if U.S.N.R.C. agrees the independent analysis is needed and would normally be required by U.S.N.R.C. if US Army CE were not involved.
- 2) US Army CE will require that the applicant pay contract or other costs of such analysis, as required in US Army CE regulations, if US Army CE determines that the independent analysis is needed, but U.S.N.R.C. does not agree that it is needed or does not agree that such analysis would be required under the regulatory procedures of U.S.N.R.C. In these cases, the contracting and collection of associated costs from the applicant will be the responsibility of the US Army CE. The U.S.N.R.C. will be furnished copies of the results of the study.

In addition, the US Army CE will review and comment on the draft environmental statement in other areas within its regulatory jurisdiction and areas in which the US Army CE has special expertise, as required by NEPA.

b. Inspections

Within the scope of this Memorandum of Understanding, the U.S.N.R.C. and the US Army CE will exercise responsibilities for the same activities with respect to inspections as they exercise with respect to environmental reviews as discussed in 3.a. above.

c. Public Hearings

The U.S.N.R.C. will conduct a mandatory adjudicatory public hearing with the opportunity for public participation before an Atomic Safety and Licensing Board covering all environmental and radiological health and safety matters relating to the proposed issuance of a U.S.N.R.C. permit for construction of a nuclear power plant. When U.S.N.R.C. proposes to issue a limited work authorization for a nuclear power plant prior to issuance of a construction permit, a public hearing on site suitability and environmental issues will be held pursuant to the applicable U.S.N.R.C. regulations. An adjudicatory hearing will be also conducted prior to issuance of a U.S.N.R.C. license for operation of the nuclear power plant upon request of any person whose interest may be affected or if the U.S.N.R.C., on its own initiative, decides that such a hearing should be held.

The US Army CE, in connection with its statutory and regulatory requirements, will conduct public hearings when required (normally, when the US Army CE permit involves disposal of dredged or fill material).

On request, each agency will participate in any public hearings held by the other agency. Particularly, in the case of the U.S.N.R.C. hearings, the US Army CE will provide expert testimony, as required, in those areas (sections) covered in the U.S.N.R.C. Environmental Statements in whose preparation the US Army CE participated and those areas of special US Army CE expertise.

4. U.S.N.R.C. Permits and Licenses and US Army CE Department of the Army Permits

A U.S.N.R.C. permit to construct a nuclear power plant must be obtained prior to any commencement of any construction at the proposed site.<sup>\*/</sup> For certain nuclear power reactors, such as the floating nuclear power plants, such a construction permit will not be issued before the U.S.N.R.C. has issued a license to manufacture these reactors. The U.S.N.R.C. will prepare an environmental statement before such a construction permit is issued, discussing the environmental effects of construction and operation of the nuclear power plant at the proposed site; and the U.S.N.R.C. will also evaluate compliance with U.S.N.R.C. criteria for safe design, construction and operation of the nuclear plant including, if applicable, a plant manufactured pursuant to a manufacturing license. US Army CE will participate in the preparation of this environmental statement as described in Section 3, above. This construction permit will be issued on the basis of, among other things, the design and other information presented by the applicant in accordance with requirements of Title 10, Code of Federal Regulations, Chapter I.

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\* Some activities may be conducted under a limited work authorization.

It is anticipated that the single US Army CE Department of the Army permit, which authorizes all construction activities to be performed at the plant site, and the U.S.N.R.C. construction permit (or limited work authorization, as applicable) will be issued approximately concurrently for power reactors for which both agencies are authorized to issue permits. Each agency will promptly notify the other in writing of its issuance of a permit. If the U.S.N.R.C. issues a limited work authorization or grants a construction exemption in a situation where a US Army CE permit is also required, the U.S.N.R.C. will promptly notify the US Army CE in writing of the issuance of such an authorization or exemption. When the U.S.N.R.C. decides that it will grant a limited work authorization prior to issuance of a construction permit, the U.S.N.R.C. will advise the US Army CE of this decision. Both agencies will then coordinate their schedules of review and issuances of licenses and permits.

Prior to these issuances, each agency will send to the other a letter commenting on the proposed issuance from the point of view of the reviews assigned to the sending agency in Section 3 above and stating its intention to approve or disapprove issuance of its own permit.

Each agency will caution the applicant that issuance of its permit does not alleviate the need for permits and licenses of other agencies.

Following the above agency actions, and after any requisite public hearings have been held, a facility operating license may be issued by the U.S.N.R.C. pursuant to 42 U.S.C. 2133, 2134, 2232, and 2235.

5. Procedures

a. Correspondence

The following documents, relating to US Army CE responsibilities as described in Section 3 of this Memorandum, will be promptly transmitted to the proper recipients by the U.S.N.R.C. Director of Nuclear Reactor Regulation or his designee: official U.S.N.R.C. notices to license applicants or licensees affected by the provisions of this Memorandum, issuances of licenses pursuant to applicable statutes and regulations, and in accordance with the provisions of this memorandum, correspondence to license applicants or licensees pertaining to licensing and certification reviews, and correspondence relating to inspection actions. The U.S.N.R.C. will promptly forward to the US Army CE copies of correspondence with the applicant and other documents which affect the responsibilities of the US Army CE under the provision of this Memorandum.

b. Public Information

All correspondence to or from either agency dealing with matters which are the subject of this Memorandum of Understanding will be subject to the Freedom of Information Act. In addition, all correspondence flowing through the U.S.N.R.C. will be subject to § 2.790 of 10 CFR Part 2, which provides for routine disclosure of certain documents in public

document rooms. Each agency will consult with the other agency before issuing any press releases on matters assigned to the other agency within this Memorandum of Understanding.

c. Coordination of Reviews

In routine matters relating to review of license applications, the appropriate U.S. Army Corps of Engineers District Engineer will be the contact point with the US Army CE; and the designated Environmental Project Manager, Division of Reactor Licensing, will be the contact point within the U.S.N.R.C. Any questions which cannot be resolved at this level will be referred to intermediate levels of management within the US Army CE and the U.S.N.R.C. If any questions cannot be resolved at these levels, they will be considered in direct communications between the Executive Director for Operations, U.S.N.R.C., and the Chief of Engineers, United States Army.

d. Coordination of Inspections

In matters of field inspections, the cognizant Directors of U.S.N.R.C. Regional Inspection and Enforcement Offices and the cognizant District Engineer will be the contact points for routine matters. Any questions which cannot be resolved at this level will be referred to intermediate levels of management within US Army CE and U.S.N.R.C. Any questions that cannot be resolved at these levels will be referred to the Chief of Engineers, United States Army, and the Executive Director for Operations, U.S.N.R.C.

e. Schedules of Reviews and Inspections

In order to coordinate inspection and review activities and to efficiently implement regulatory requirements, each agency will advise the other of its schedules for accomplishing inspections and environmental reviews which have an effect on the activities of the other agency as defined in Section 3.a. of this Memorandum of Understanding. Where applicable, these schedules will be incorporated into the U.S.N.R.C. licensing project schedule. Representatives of each agency will be invited to coordination meetings held by the other agency pertaining to environmental review activities which are to be coordinated. Each agency will give priority to keeping the agreed schedules for environmental reviews and will keep the other agency advised of problems which are jeopardizing schedules.

f. Amendment of Assignments

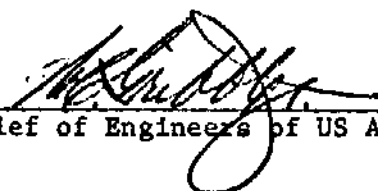
The assignment of responsibilities of this Memorandum may be amended by exchange of letters between the Executive Director for Operations, U.S.N.R.C., and the Chief of Engineers, United States Army.

6. Other Laws and Matters

Nothing in this Memorandum of Understanding shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor the

application or enforcement of such laws to matters other than those specified herein, nor shall anything in this Memorandum be construed as modifying the existing authority of either agency.

Signed:

  
Chief of Engineers of US Army CE

  
Executive Director for Operations  
Nuclear Regulatory Commission

Date:

2 July 1975

Date:

July 2, 1975